



The COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
OFFICE OF COASTAL ZONE MANAGEMENT

251 Causeway Street, Suite 800, Boston, MA 02114-2136

Tel. (617) 626-1200 Fax (617) 626-1240 Web Site: www.mass.gov/czm/buar/index.htm

28 February 2006

Walter D. Cruickshank
Acting Director
Minerals Management Service
Attn.: Rules Processing Team
381 Elden Street, MS-4024
Herndon, VA 20170-4817

RE: Alternate Energy-Related Uses on the Outer Continental Shelf. **RIN 1010-AD30.**

Dear Mr. Cruickshank:

The Massachusetts Board of Underwater Archaeological Resources (BUAR) takes this opportunity to provide comments to the Minerals Management Service's (MMS) on the development of a regulatory program to implement portions of the Energy Policy Act of 2005, Section 388—Alternate Energy—Related Uses on the Outer Continental Shelf, published in the *Federal Register* (70 Fed. Reg. 250 (2005)), on December 30, 2005.

The BUAR has a strong interest in the Outer Continental Shelf (OCS). Historic and archaeological findings on the OCS inform understandings of history, cultures, and the ever-changing environment. Projects proposed on the OCS may rely upon or be partially located within Massachusetts waters and lands, affecting historic and archaeological resources in state jurisdiction. The maritime heritage of Massachusetts encompasses one of the widest representations of this legacy. Examples of maritime cultural resources include large vessels and small craft, lighthouses/lightships, waterfront facilities (e.g., wharves, chandlers, ropewalks, boatyards, custom houses), homes of people associated with maritime-related activities, maritime-related archaeological sites, and living traditions and skills. However, a 1990 study of maritime cultural resources showed the extent of underrepresentation of these resources, finding only a little more than 2,000 historic sites/vessels/complexes identified along Massachusetts Bay alone. Many of these sites and related activities are often lost through local waterfront development or, simply, deterioration. There are an estimated 3,000 shipwrecks off the coast of Massachusetts. While only a small number of these sites have been positively identified, we must assume many could be important historic resources. Many more sites need to be located and identified in order that the public can benefit from this rich yet fragile maritime legacy. Further, much of this research failed to consider ancient Native Americans. As you know, vast lands that are now submerged by the Atlantic Ocean were once exposed and populated by ancient Native Americans. Archaeological studies have just begun to identify and document this potential. Maritime treasure could be lost forever, unless appropriate consideration and actions are taken to preserve them.

As trustee of Massachusetts' underwater cultural heritage, BUAR serves to promote and protect the public's interest in these fragile nonrenewable resources. BUAR (MGL c. 6, s. 179-180, c. 91, s. 63; 312 CMR 2-2.15) has broad duties in historic preservation to protect the Commonwealth's interest in submerged historic and archaeological resources. It has particular expertise in underwater archaeological resources, and has been closely involved as an interested and consulting party in reviews of numerous federally-assisted projects as well as assisting cognizant federal agencies. BUAR has a role and provides important guidance as part of environmental review for proposed projects that seek state or federal funding, permits, licenses, or approvals.

The BUAR notes that by granting of private access rights to the public lands of the OCS, including leases, easements, and rights-of-way, these are "undertakings" (36 CFR 800.16(y)) that require determinations by MMS in compliance with Sections 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470f (36 CFR 800)). Consultation with appropriate State Historic Preservation Officers, Tribal Historic Preservation Officers, other consulting parties (such as the BUAR), and involving the interested public in decision-making, are critical issues that need to be outlined in MMS regulations. Section 110 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470h-2) also requires that MMS should undertake cultural resource surveys to locate, identify, evaluate, nominate, and protect historic and archaeological properties that are eligible for listing in the National Register of Historic Places. Section 110 has other specific requirements regarding the protection of significant historic and archaeological properties on federal property.

When developing its regulations, guidance documents, and policies for cultural resource management of the OCS, MMS must consider other federal programs, regulations, and guidance documents, and the literature developed for training and education of historic preservation and archaeological professionals. As part of MMS regulations and policies, important factors should be the consideration of feasible and practical alternatives to activities and policies that conflict with the preservation of non-renewable cultural resources. Any regulations and policies proposed by the MMS should be consistent with existing federal historic preservation laws and regulations. They should be tailored to strengthen protections for significant cultural resources as public heritage of the nation. Further, the educational and interpretive values of OCS cultural resources should be fostered for the public as part of MMS policies. Finally, MMS should create a task force of experienced cultural resource management professionals from the public and private sectors as a practical approach to address the specific questions posed in the request for comments.

In 1979, a pioneering, broad brush archaeological reconnaissance survey was undertaken by the Bureau of Land Management for the OCS oil and gas leasing areas from the Bay of Fundy to Cape Hatteras. The resulting report is no longer considered to be adequate or reliable at finer resolutions required to evaluate specific locations. As part of the Coordinated OCS Mapping Initiative (Section 388b of the Energy Policy Act of 2005), MMS is required to undertake a survey and assessment of portions of the OCS that are likely to contain submerged cultural resources. BUAR recommends MMS undertake an up-to-date comprehensive survey, using state-of-the-art archaeological and remote sensing technologies, as well as incorporating a detailed literature review of historic sources and current research efforts.

In closing, BUAR notes that ancient and historic period Native American sites, historical period, underwater archaeological resources, historic ships, and, maritime-related structures and features, are all non-renewable cultural resources that cannot be "restored" if impacted.

Thank you for your consideration of these comments. If you have any questions or need further information, do not hesitate to contact the BUAR staff.

Sincerely yours,



Victor T. Mastone
Director

/vtm

Cc: Massachusetts Historical Commission
Massachusetts Office of Coastal Zone Management